

EXHIBIT 3

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

UKRAINIAN FUTURE CREDIT UNION, - -
a state chartered credit
union,

Plaintiff, Case No. 2015-0524-CZ

vs.

ADRII B. GARAK, et al,

Defendants.

-----/

PROCEEDINGS

BEFORE THE HONORABLE DIANE M. DRUZINSKI, CIRCUIT
JUDGE

Mount Clemens, Michigan - Monday, October 17, 2016

APPEARANCES:

For the Plaintiff: JAMES W. BIGELOW (P42331)
41570 Hayes Road, Suite E-1
Clinton Township, MI 48038
(586) 530-7788

For the Defendant: WILLIAM R. SEIKALY (P33165)
30445 Northwestern Hwy., Suite 250
Farmington Hills, MI 48334
(248) 785-0102

1 For the Defendant: DANIEL RANDAZZO (P39935)
 2 2731 S. Adams Road, Ste. 100
 3 Rochester Hills, MI 48309
 4 (248) 853-1003

23 REPORTED BY: ANGELA M. LITTLE, CSR-6444, RPR
 24 Certified Court Reporter
 25 (586) 469-5832

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PAGEWITNESSES: PLAINTIFF

None.

WITNESSES: DEFENDANT

None.

EXHIBITSADMITTED

None offered.

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ANGELA M. LITTLE, CSR-6444, RPR
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1 Mount Clemens, Michigan
 2 Monday, October 17, 2016
 3 At about 10:44 a.m.

4 - - -
 5 (Court, Counsel and parties present.)

6 THE CLERK: Ukrainian Future Credit Union
 7 versus Garak.

8 MR. BIGELOW: Good morning, your Honor. For
 9 the record, James Bigelow appearing on behalf of
 10 plaintiff.

11 MR. RANDAZZO: Good morning, your Honor.
 12 Dan Randazzo on behalf of Mr. Holyk.

13 MR. SEIKALY: Good morning, your Honor.
 14 William Seikaly appearing on behalf of Lidia
 15 Shibanov.

16 THE COURT: Okay.

17 MR. RANDAZZO: How would you like to
 18 proceed, Judge?

19 THE COURT: Whose was the first motion
 20 filed?

21 MR. RANDAZZO: I think I --

22 MR. BIGELOW: Mr. Randazzo.

23 MR. RANDAZZO: I think mine was as to
 24 costs.

25 THE COURT: Okay. That's the one motion

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1 that I don't have. Well, let me tell you what I
 2 have. I have the Plaintiff's Motion Requiring --
 3 Requesting Removal of Social Security Numbers and
 4 Other Information. I have Plaintiff's Motion for
 5 Entry of Default Judgment.

6 MR. BIGELOW: We can dispense with the
 7 default judgment entered, Judge. I received notice
 8 from a bankruptcy attorney on Friday Mr. and Mrs.
 9 Garak filed a Chapter 7 case. I have a copy of the
 10 petition here. It is a skeleton petition, there's
 11 no schedules or a statement of financial affairs
 12 attached, but I do have an order for administrative
 13 closing as to those two. The co-debtor stay does
 14 not apply because it's a Chapter 7 case.

15 THE COURT: Okay. So the motion for entry
 16 of default judgment is withdrawn because the two
 17 individuals have filed for bankruptcy?

18 MR. BIGELOW: Yes.

19 THE COURT: I have Plaintiff's Response to
 20 Defendant Holyk's Motion for Costs and Attorney
 21 Fees, but I don't have the motion. I'm so sorry.
 22 I'm doing my best to get track of everything. And
 23 then I have plaintiff's motion to redact that
 24 information from the exhibit; I have the response.
 25 Do you want to hit the high points of your motion?

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1 MR. RANDAZZO: Sure, Judge, I can do that.

2 THE COURT: This is on behalf of Holyk?

3 MR. RANDAZZO: Yes. I filed it under both
4 court rules under the case evaluation sanction and
5 under the frivolous case -- court rule. Under the
6 frivolous court rule, this court granted summary
7 disposition to Mr. Holyk. The counts that the
8 plaintiff filed against my client included breach of
9 contract, accounts stated, and a couple of fraud
10 counts as well as a waste. It was clear from the
11 evidence that was produced during discovery that the
12 plaintiff knew or had reason to know that Mr. Holyk
13 never signed any contract or promissory note with
14 regard to the loan. They knew that Mr. Garak and
15 Mr. Holyk had formed a business and that Mr. Garak
16 was borrowing the money for the purpose of buying
17 some property so that they could run their business
18 and Mr. Holyk in fact had pledged some property so
19 this whole straw transaction of fraud, there was no
20 basis in fact or law for them to bring that case,
21 those claims against Mr. Holyk. They had certainly
22 the breach of contract and the account stated had no
23 basis whatsoever, and I argue that the fraud did as
24 well.

25 The waste count, the granted summary

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1 disposition as to that as well, I believe that
2 Mr. Bigelow has filed a motion for reconsideration
3 that the Court hasn't made a ruling on yet with
4 respect to that, but I would argue that the Court
5 was correct in the first instance. And with regard
6 to that, Mr. Holyk, they knew that the entity
7 Northstar One was in possession of the property
8 because they received a check from Northstar One.
9 So none of the claims in my view had any basis in
10 fact that they had knowledge as to what the
11 transaction was right from jump street, and I think
12 it was just an attempt on their part to get as many
13 people into this case to get money from as it was a
14 money grab, basically.

15 As for case evaluation sanctions, the rule
16 indicates that the aggregate that when you're
17 talking about multiple parties, that it only applies
18 as to the plaintiff and the party at issue. The
19 case evaluation was rejected by the plaintiff. The
20 case evaluation as to Mr. Holyk was \$2,500. Clearly
21 the verdict was greater than that. I think Mr.
22 Bigelow was going to argue well the aggregate
23 verdict could be greater than that because I'm going
24 to take a judgment against Garaks but there was no
25 judgment at the time that the motion was granted so

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1 the aggregate verdict has to be in my favor. With
2 that, I'll -- those are the high points.

3 THE COURT: Mr. Bigelow.

4 MR. BIGELOW: Well, your Honor, as to the
5 waste claim, I have filed that reconsideration
6 motion based on one case. There is a Supreme Court
7 case that says you can sue a person individually for
8 waste. Mr. Holyk was the only possessor of this
9 property. There's never been any evidence that he
10 did not commit all the waste. He's never filed an
11 affidavit saying he didn't dump all the trash and
12 ruin this building. Certainly, there's no frivolity
13 there.

14 As to the case evaluation sanctions, we had
15 to come here multiple times regarding the conduct of
16 Mr. Holyk. We had to repossess multiple vehicles
17 from him. We had to get a court order requiring him
18 to provide us with the Max truck and that truck was
19 sold for slightly over \$4,000. That gets us over
20 the \$2,500 case evaluation sanction threshold.

21 We also had to file a motion just to get
22 access to the property, which he completely
23 controlled. He had the only key, the facility was
24 locked, and we had to do that just to get into the
25 building so that we could have it appraised and have

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1 the problem with the proposed trash removal assessed
2 as well.

3 Regarding the Bill of Costs submitted, your
4 Honor, there's no statutory authority listed for any
5 of the costs. And as to the attorney fees, there is
6 approximately \$7,000, which can't possibly be
7 awarded even if we were at that point because it's
8 only for attorney fees necessitated by the rejection
9 after the case evaluation. Mr. Randazzo has
10 approximately \$7,000 going back I think to when he
11 first answered the complaint. And also, your Honor,
12 I think it's premature because we still don't know
13 what the aggregate verdict is going to be and
14 Shibanov is still in the case.

15 THE COURT: I'm going to find your motion
16 and I will take it under advisement.

17 MR. RANDAZZO: Okay.

18 THE COURT: Okay. And, I apologize. I
19 don't know where it is.

20 MR. RANDAZZO: Do you want my copy, Judge,
21 just in case you can't find it?

22 THE COURT: I don't know how we could have
23 misplaced something that large.

24 MR. RANDAZZO: Well, this is not the whole
25 thing. This is multiple motions, Judge.

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1 THE COURT: I think Patty, we'll find it.
 2 THE CLERK: Sure. We'll find it. It'll
 3 turn up. They always do.
 4 THE COURT: Don't worry about it. We'll
 5 find it. It might have been between being received
 6 and filed.

7 MR. RANDAZZO: Okay.

8 THE COURT: Okay. So defendant's motion
 9 for costs and attorney fees as to Holyk is taken
 10 under advisement and an opinion will issue. I have
 11 the response. Okay. Now, I have your motion to
 12 redact the Social Security numbers.

13 MR. BIGELOW: Remove those documents from
 14 the file actually, your Honor.

15 THE COURT: It seems like there was an
 16 agreement in terms of the Social Security numbers;
 17 is that correct?

18 MR. BIGELOW: No --

19 MR. SEIKALY: Your Honor, we submitted --

20 MR. BIGELOW: -- not from us, your Honor.

21 THE COURT: You don't want them removed?

22 MR. BIGELOW: Well, I want the documents
 23 themselves removed. Mr. Seikaly is trying to get an
 24 order admitted which exonerates him from any
 25 liability regarding the violation of the privacy

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1 rights of these 37 potential plaintiffs. He wants
 2 the Court to enter an order which indicates --

3 THE COURT: Well, let's just talk about
 4 your motion. Okay. You want an order requiring
 5 removal of documents relating to Social Security
 6 numbers and private confidential information from
 7 the court file. That's Exhibit 3, 15 and 17, right?

8 MR. BIGELOW: Yes.

9 THE COURT: Okay.

10 MR. BIGELOW: From his supplemental to the
 11 summary judgment motion.

12 THE COURT: Okay.

13 MR. RANDAZZO: And my understanding is we
 14 agreed to that.

15 MR. SEIKALY: Well, I'm sorry, your Honor,
 16 there's no question that the Social Security numbers
 17 should be redacted. Nobody argues that point. I
 18 submitted an order with an e-mail saying I'm not
 19 suggesting that you're waiving any other rights, but
 20 we ought to get the Social Security numbers
 21 redacted.

22 THE COURT: No response?

23 MR. SEIKALY: Well, not only was there no
 24 response, Mr. Randazzo and I both signed the order,
 25 we sent it to Mr. Bigelow, it wasn't entered. It

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1 was sent to him within 48 hours. I mean, I was
 2 really crazy busy that week but within 48 hours of
 3 discovering this, because I didn't see these Social
 4 Security numbers, none of us did, and we agree they
 5 ought to be redacted, the numbers.

6 THE COURT: It seems to boil down to
 7 whether they should be redacted or removed.

8 MR. SEIKALY: Well --

9 MR. BIGELOW: Judge, I think I'd need to
 10 make my motion here. Can I do that?

11 THE COURT: Certainly.

12 MR. BIGELOW: Thank you. Your Honor, as far
 13 as the proposed order Mr. Seikaly submitted, that
 14 order indicates that the information was submitted
 15 inadvertently. And, I have a board, ten board
 16 members, total of 37 people that aren't very happy
 17 with the fact that these Social Security numbers
 18 were released potentially to the general public,
 19 and, he would like an order which is going to
 20 protect him and his client under the Social Security
 21 Privacy Act from any claims made by these people. I
 22 certainly don't have the authority to do that.

23 There's three documents we're talking
 24 about. There's is the roster containing all the
 25 Social Security numbers of the plaintiff's employees

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1 and board members.

2 THE COURT: That is Exhibit 3?

3 MR. BIGELOW: That is Exhibit 3. There is
 4 absolutely no probative value to this document.
 5 It's completely done to harass these people. And in
 6 addition, your Honor, the other two documents
 7 contain private information regarding credit union
 8 members who have accounts. And one of them is even
 9 an examination report response which was submitted
 10 to the state that Mr. Seikaly doesn't have any basis
 11 for even having. Your Honor, we don't know how
 12 these documents were illegally obtained by Mr.
 13 Seikaly and that's very important too.

14 I have filed a motion for disqualification
 15 to be heard on the 31st. I spoke to your clerk on
 16 the 7th I believe when I was advised that the Court
 17 would not be hearing the motion ex-parte.

18 THE COURT: Clearly, I would not hear it
 19 ex-parte, and I'm not going to get involved between
 20 any other claims that might be pending between you
 21 and Mr. Bigelow, your client, or any of these
 22 individuals and any other opposing counsel or their
 23 clients so don't try and set this up to make this
 24 Court involved in that because I'm not going to get
 25 involved in it. All right?

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1 MR. BIGELOW: And I think --
 2 THE COURT: In terms of the Social Security
 3 numbers in Exhibit Number 3, Exhibit 3 is going to
 4 stay in. All the Social Security numbers will be
 5 redacted. Okay.
 6 Exhibit Number 15, this is the document,
 7 the Management Action Review, the MARS documents.
 8 MR. BIGELOW: Yes.
 9 THE COURT: What's the problem with that?
 10 It appears to deal with some of the individuals
 11 and/or loans and/or information in this case.
 12 MR. BIGELOW: I believe there are some
 13 individuals who don't apply in this case.
 14 THE COURT: There's some that do apply
 15 also, correct?
 16 MR. BIGELOW: Yes, I believe so.
 17 THE COURT: Okay. And do you want --
 18 clearly the ones that apply would seem to be
 19 pertinent?
 20 MR. BIGELOW: I don't think -- like I said,
 21 Judge, this is a cumulative document and, you know,
 22 Mr. Seikaly has not indicated how he obtained these
 23 documents. I certainly would have never given him a
 24 list of full roster of people's Social Security
 25 numbers.

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1 THE COURT: We're past Social Security. I
 2 look at it as two ways: A) I don't know why you
 3 didn't give it to him if it's pertinent and, (B) I
 4 don't know how we got it if it wasn't provided to
 5 him. My rule now is to rule on these motions. I'm
 6 not going to get involved in whether or not you want
 7 to file misdemeanor charges against his clients or
 8 Mr. Randazzo's clients, or if there's going to be
 9 legal or criminal investigations. Not going to go
 10 there so don't try to position it that way. All
 11 right. Same for you counsel.
 12 MR. SEIKALY: I haven't said anything, your
 13 Honor.
 14 THE COURT: In terms of Exhibit 15, those
 15 documents they have some information relating to the
 16 parties in this case.
 17 MR. RANDAZZO: Right.
 18 THE COURT: I mean, I read them, Mr.
 19 Bigelow. I mean, we've got Darria Brown all over
 20 this. Exhibit 15 is going to stay. In terms of
 21 Exhibit 17, that's the January 8, 2013 letter to the
 22 State of Michigan, correct?
 23 MR. BIGELOW: Yes, it is.
 24 THE COURT: Okay. And that's in response
 25 to a recorded examination?

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1 MR. BIGELOW: Yes, and it contains numerous
 2 credit union members who have accounts, they're
 3 listed as well.
 4 THE COURT: And the significance of this
 5 document?
 6 MR. SEIKALY: Relates to the fact that they
 7 were well aware of what was going on with this
 8 phone. And, your Honor, I'm sorry, I did not have a
 9 chance to look at that document, but I wouldn't have
 10 admitted it if -- I wouldn't have used it. Nobody
 11 objected to its relevance at any point in time.
 12 THE COURT: I know. It's been around for a
 13 couple of months. The individuals who are not
 14 pertinent to this lawsuit should be redacted --
 15 MR. SEIKALY: Yes.
 16 THE COURT: -- from Exhibit 17. I mean, I
 17 recognize some of the names in here, but I don't
 18 pretend to know all the names and individuals that
 19 were discussed during the course of discovery. I
 20 want you to look through Exhibit 17 now and tell me
 21 which individuals in your opinion were related to
 22 this --
 23 MR. SEIKALY: Thank you, your Honor.
 24 THE COURT: -- litigation. And then Mr.
 25 Bigelow can tell me why he agrees or not and then I

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1 will make a ruling in terms of the remaining
 2 individuals.
 3 MR. SEIKALY: Your Honor, the relevance of
 4 that document was to establish that as of the time
 5 that Mrs. Shibarov left, there was no deficiency.
 6 THE COURT: Okay.
 7 MR. SEIKALY: The fact that they're
 8 responding to the issues of deficiency in this loan
 9 isn't even mentioned and my client is now gone, is
 10 directly relevant how they viewed what was going on.
 11 THE COURT: This is January, 2013?
 12 MR. SEIKALY: Yes. And, your Honor, I have
 13 no objection, by the way, to redacting the names.
 14 It's not what we've done in this case, but if
 15 Mr. Bigelow's concern is that there are names in
 16 there, you can redact every name that's in there and
 17 I'm not going to object. I'm not here to create
 18 problems or embarrass people.
 19 THE COURT: Okay. Then redact the names in
 20 Exhibit 17.
 21 MR. SEIKALY: Thank you, your Honor.
 22 THE COURT: Okay. So plaintiff's motion is
 23 granted in part as to Exhibit 3, the Social Security
 24 numbers will be redacted; denied as to Exhibit 15,
 25 that document stays; and granted in part as to

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1 Exhibit 17, the document stays and the names are
 2 redacted. And I will take Holyk's motion for costs
 3 under advisement as soon as I find the motion.
 4 MR. SEIKALY: Very good. Your Honor, one
 housekeeping matter. We have some motions in limine
 5 that are going to be due, and we can't seem to agree
 6 when what depositions get taken. The motion for
 7 that it's not set for another two weeks. I hate to
 8 bother the Court with it today, but I don't know
 9 what to do. If there is this much chance of a trial
 10 going forward, I'm going to get motions in limine
 11 and I'm going to keep on going. I don't think that
 12 there is. I think the Court made that clear in its
 13 order, but I have done everything short of begging
 14 to try and to move these two depositions and I can't
 15 seem to get that done.

16 THE COURT: I don't technically have the
 17 motion regarding your client's deposition in front
 18 of me, although everybody's referred to it. What's
 19 the stalemate, whether we finish Jakymowych's first
 20 and then do Shibanov?

21 MR. SEIKALY: No. Your Honor, I mean, yes.
 22 I mean, that's one of the issues and I've -- you've
 23 read the -- you've had the e-mails back and forth,
 24 I'm willing to do my client's depositions at the,

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1 you know, the same day as Mr. Jakymowych's finishes,
 2 but what happened was is we asked for some dates, he
 3 said I'm going to file a motion --

4 THE COURT: Well --

5 MR. SEIKALY: -- for clarification. Your
 6 Honor, I was served with that motion today.

7 THE COURT: Okay.

8 MR. SEIKALY: We just need to get this
 9 scheduled. We can do them, we can do Mr.
 10 Jakymowych, which is limited to an hour and fifteen
 11 minutes, two sessions. We can do a Monday and
 12 Tuesday and he can take my client's Tuesday
 13 afternoon because she's in a different time zone
 14 anyhow.

15 THE COURT: You want me to decide this
 16 today, gentlemen?

17 MR. BIGELOW: I want you to decide it the
 18 31st, Judge. I think you need to look at my motion.

19 THE COURT: Which motion is that?

20 MR. BIGELOW: It's the motion related to
 21 the discovery. Mr. Seikaly wouldn't produce his
 22 client. He wouldn't give me dates. It's all laid
 23 out in my motion.

24 THE COURT: I will just tell you right now,
 25 I read the e-mail and I disagree with your version

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1 of them. So if you want to figure it out between
 2 now and the 31st, feel free to do that. All right.

3 MR. BIGELOW: Thank you, Judge.

4 MR. RANDAZZO: Thank you, your Honor.

5 MR. SEIKALY: Your Honor, should we be
 6 filing our motions in limine?

7 THE COURT: You should because we're going
 8 to try this case at the end of November.

9 MR. SEIKALY: I disagree with you, but
 10 that's only because of what you already said in your
 11 order. But, thank you, your Honor.

12 (At 11:09 a.m., proceedings concluded)

13 * * *

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